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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,023	07/21/2003	Alain Romier	28944/40075	5077

29471 7590 12/21/2005

MCCRACKEN & FRANK LLP  
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CHICAGO, IL 60606

EXAMINER
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SOOHOO, TONY GLEN

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 12/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/624,023

**Applicant(s)**

ROMIER ET AL.

**Examiner**

Tony G. Soohoo

**Art Unit**

1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2005.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-25 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1 and 3-25 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Double Patenting***

2. Claim 4 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 1. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).
3. Claim 13 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 15. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 1, and 3-25, are rejected under 35 U.S.C. 103(a) as being unpatentable over FR 2689051, cited on PTO 1449.

The French reference, see page 2, lines 18 through page 3 line 11, and page 5 lines 1-15. FR '051 discloses all of the recited subject matter as defined within the scope of the claims with the exception of the method step of the particular aggregate chip size claim 1, and the temperature of ranges of the heated aggregate and its effect on the final temperature of the mixture (claim 1, 11); and the particular water content (claim 7), the amount of water in the mixture to effect water vaporization (claim 9), amount water added and remaining in the mixture after adding the bitumen coating (claim 10). With regards the temperature of the aggregate, it is also old and well known in the art of bituminous mixtures of aggregate for paving or cement applications to monitor and control the temperature of the material components as it is added to the mixture whereby it will effect the total temperature profile of the mixture as the component material is added to the mixture itself. Accordingly, absent any unexpected result, it is deemed that it would have been obvious to one of ordinary skill in the art to modify the steps shown by the reference above to optimize the temperature of the profile of the mixture by controlling the temperature of the aggregate so as to create a more consistent mixture.

Absent any unexpected result, it is old and well known in the art of making bituminous mixtures of aggregate for paving or cement applications that the amount of water in each of the component additive ingredients, or the water added in the mixture is an effective variable in the temperature gradient of the process thereby effecting the

efficiently and profile of a desired heat transfer profile to the mixture during the mixing and adding of each respective component material in the mixture. Accordingly, absent any unexpected result, it is deemed that it would have been obvious to one of ordinary skill in the art to modify the steps shown by the reference above to optimize the temperature profile by controlling the amount of water in the aggregate, water in the mixture, or the liquid water added to the mixture in order to produce a more effective transfer of and control of heat to mixture for a more stable mixture.

6. Claims 1, 3-25, are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 430979, cited on PTO 1449.

The Great Britain reference, GB '979 discloses all of the recited subject matter as defined within the scope of the claims with the exception of the method step; 1<sup>st</sup> portion of the aggregate and the 2<sup>nd</sup> portion being sand and fines of a particular size (claims 1 and 4-5), and the temperature of ranges of the heated aggregate and its effect on the final temperature of the mixture (claims 1, 8, 11); and having the particular aggregate water content (claim 7), the amount of water in the mixture to effect water vaporization (claim 9), amount water added and remaining in the mixture after adding the bituminous coating (claim 10).

With regards to the 1<sup>st</sup> portion aggregate size being the ranged of 4mm to 20mm, it is old and well known in the art to use various size aggregates which are graded to provide a better cooperation with the size of the fines so as to produce a more stable

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paving mixture, accordingly absent any unexpected result, it is deemed that it would have been obvious to one of ordinary skill in the art to optimize the size mixture of the aggregate of the reference in order to optimize the cooperation of the filler material with the aggregate chippings to produce a more stable material for use.

With regards to the 2<sup>nd</sup> portion being sand and fines, it is old and well known in the art to use various size fillers of sand and fines which are graded to provide a better cooperation with the size of the aggregate so as to produce a more stable paving mixture, accordingly absent any unexpected result, it is deemed that it would have been obvious to one of ordinary skill in the art to optimize the mixture of the aggregate of the reference above by choosing the relative sizes of the mixture filler aggregate comprising with sand and fines of a size and with a sand size of greater than 2mm in order to optimize the cooperation of the filler material with the aggregate to produce a more stable material for use.

With regards the temperature of the aggregate, it is also old and well known in the art of bituminous mixtures of aggregate for paving or cement applications to monitor and control the temperature of the material components as it is added to the mixture whereby it will effect the total temperature profile of the mixture as the component material is added to the mixture itself. Accordingly, absent any unexpected result, it is deemed that it would have been obvious to one of ordinary skill in the art to modify the steps shown by the reference above to optimize the temperature of the profile of the mixture by controlling the temperature of the aggregate so as to create a more consistent mixture.

Absent any unexpected result, it is old and well known in the art of making bituminous mixtures of aggregate for paving or cement applications that the amount of water in each of the component additive ingredients, or the water added in the mixture is an effective variable in the temperature gradient of the process thereby effecting the efficiently and profile of a desired heat transfer profile to the mixture during the mixing and adding of each respective component material in the mixture. Accordingly, absent any unexpected result, it is deemed that it would have been obvious to one of ordinary skill in the art to modify the steps show by the reference above to optimize the temperature profile by controlling the amount of water in the aggregate, water in the mixture, or the liquid water added to the mixture in order to produce a more effective transfer of and control of heat to mixture for a more stable mixture.

### ***Response to Arguments***

7. Applicant's arguments filed 9-30-2005 have been fully considered but they are not persuasive.
8. Applicant has combined issues of claim 2 and has added issues to the size of the chipping as lying in the range of 4mm to 20mm.
9. Applicant alleges that claim 2 was not rejected under the British, GB430979, page 8 of applicants response of 9-30-2005. Applicant is refereed to the Office action of 3-29-2005 on page 4, section heading part 8, where claim 2 is rejected under GB 430979. With regards to the French, FR '051 reference applicant alleges that the examiner has not provided a case of prima face obvious because there is no motivation

to heat the mixture to the temperature recited in the claim. In response, applicant has addressed the temperature issues and the motivation above in part 5.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

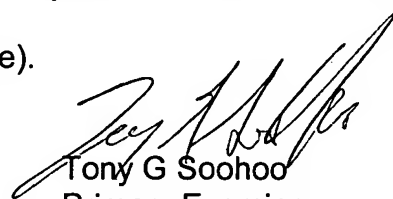
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose telephone number is (571) 272 1147. The examiner can normally be reached on 7-5PM, Tue-Fri.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tony G Soohoo  
Primary Examiner  
Art Unit 1723

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